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No. 84-928

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ABBEY NURSING HOME, INC., and MAX A. STRAUSS,
Petitioners,

v.

ESTATE OF ALMA RICHARDSON, VERNEDA BENTLEY, ADMINISTRATRIX,
Respondent.

On Writ Of Certiorari To The Ohio Eighth District Court of Appeals

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

NICHOLAS M. DEVITO, ESQUIRE
Estate of Alma Richardson,
Verneda Bentley, Administratrix

NICHOLAS M. DEVITO & ASSOCIATES
Suite 1000 Terminal Tower
Cleveland, Ohio 44113
(216) 687-1212

Counsel of Record for Respondent

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTIONS/ISSUES PRESENTED FOR REVIEW

1. It is *not* a violation of Article VI, Cl. 2, the "Supremacy Clause" of the United States Constitution, when the Ohio Department of Welfare and/or the Cuyahoga County Welfare Department is not joined as a party in a civil action and the facts indicate that there was no right of subrogation.

2. Petitioners are *not* entitled to certiorari because there is absolutely *no* proof of any alleged violation of the Due Process and/or Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

3. Petitioners are *not* entitled to certiorari because there is absolutely no proof of any alleged violation of petitioners' liberty interest.

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CITATIONS OF OPINIONS AND JUDGMENTS RENDERED IN THE COURTS BELOW

A. Order denying Motion to Certify in the Supreme Court of Ohio, Case No. 84-711. (See Appendix, Exhibit A.)

B. Order denying Motion for Rehearing in the Supreme Court, Ohio Supreme Court Case No. 84-264, May 23, 1984. (See Appendix, Exhibit B.)

C. Order and Opinion denying Motion in Support of Jurisdiction in the Supreme Court of Ohio, Ohio Supreme Court Case No. 84-264, April 18, 1984. (See Appendix, Exhibit C.)

D. Order and Opinion denying Motion to Certify in Court of Appeals, Case No. 46126. (See Appendix, Exhibit D.)

E. Order and Opinion affirming trial court judgment, Ohio Court of Appeals, Eighth Appellate District, Case No. 4626. (See Appendix, Exhibit E.)

F. Order rendering judgment upon verdict after Remittitur, Cuyahoga County, Ohio Court of Common Pleas, Case No. 988159. (See Appendix, Exhibit F.)

G. Order granting Motion for Remittitur in Cuyahoga County, Ohio Court of Common Pleas, Case No. 988159. (See Appendix, Exhibit G.)

H. Order rendering judgment in accordance with jury verdict, in second trial, Cuyahoga County, Ohio Court of Common Pleas, Case No. 988159. (See Appendix, Exhibit H.)

I. Order denying Motion to Certify in Supreme Court of Ohio, Ohio Supreme Court Case No. 81-1453. (See Appendix, Exhibit J.)

J. Order denying Motion to Certify in Supreme Court of Ohio, Ohio Supreme Court Case No. 81-1454. (See Appendix, Exhibit L.)

K. Order denying Motion to Certify, Ohio Court of Appeals, Eighth Appellate District, Case Nos. 42156 and 42168. (See Appendix, Exhibit N.)

L. Order and Opinion remanding original trial court judgment, Ohio Court of Appeals, Eighth Appellate District, Case Nos. 42156 and 42168. (See Appendix, Exhibit O).

M. Order entering judgment upon verdict at first trial in Cuyahoga County, Ohio Court of Common Pleas, Case No. 988159. (See Appendix, Exhibit P.)

JURISDICTIONAL STATEMENT

Petitioners erroneously allege and request this Honorable Court to invoke jurisdiction pursuant to 28 U.S.C. Section 1257(3), which reads in pertinent part:

> By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute, is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

Respondent contends that the petitioners have failed to present a claim which warrants the invocation or confers upon this Supreme Court, the jurisdictional requisite and right to review and/or grant certiorari. Wherefore, the judgment of the lower court must stand, and petitioners' request for Writ of Certiorari denied.

ALLEGED CONSTITUTIONAL PROVISION INVOLVED

Respondent further contends that the petitioners have failed to present to this Court any facts which

constitute violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; nor any violation of the Supremacy Clause.

STATEMENT OF THE CASE

This case came to be heard in the Common Pleas Court of Cuyahoga County, Ohio, upon an action instituted by the Administratrix of the Estate of Alma Richardson (Richardson) against, *inter alia*, Abbey Nursing Home, Inc. (Abbey) and Max A. Strauss for negligence in the care and protection that they provided for decedent.

In the first trial, a jury verdict in the amount of Three Thousand One Hundred Eighty-eight Dollars ($3,188.00) was returned against said defendants (See Appendix, Ex. P) after three (3) weeks of testimony and evidence introduced at the trial court. Subsequently, both plaintiff and defendants, Abbey and Max A. Strauss, appealed from said judgment, respectively Case Nos. 42156 and 42168. Both appeals resulted from the same lower court trial; consequently, the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District consolidated said appeals, reversed the trial court and remanded the within action for a new trial. (See Appendix, Ex. O.) *Inter alia*, said Ohio Court of Appeals held that there was sufficient evidence introduced at trial to render the issue of punitive damages a jury question; and that it was error for the trial court to refuse such an instruction.

In July, 1982, the action was retried before the Honorable George J. McMonagle, in the Court of Common Pleas, Cuyahoga County, Ohio, and on July 22,

1982, the jury rendered a verdict in favor of plaintiff-respondent in the sum of Seventy Five Thousand Dollars ($75,000.00) in compensatory damages and Three Hundred Thousand Dollars ($300,000.00) in punitive damages against defendants-petitioners Abbey Nursing Home, Inc., and Max A. Strauss (See Appendix, Ex. H). Subsequently, defendants-petitioners timely filed a Motion for New Trial or, in the alternative, a Motion for Judgment Notwithstanding the Verdict and a Motion for a Remittitur. The trial court found Defendants' Motion for a Remittitur to be well taken and determined that the judgment with respect to punitive damages was excessive by One Hundred Twenty-five Thousand Dollars ($125,000.00) although not the result of passion and prejudice (See Appendix, Ex. G). Plaintiff consented to the remittitur; consequently, defendants' Motion for New Trial and for Judgment Notwithstanding the Verdict were overruled and judgment was entered in the amount of Seventy-five Thousand Dollars ($75,000.00) in compensatory damages and One Hundred Seventy-five Thousand Dollars ($175,000.00) in punitive damages (See Appendix, Ex. F).

Subsequently, defendants-petitioners appealed from the judgment rendered in the second trial (said appeal was filed with the Eighth Appellate District, Ohio Court of Appeals; and assigned Case No. 46126). In its decision announced December 8, 1983, said Appeals Court affirmed the judgment against defendants, Abbey Nursing Home, Inc., and Max Strauss, in the amount of Seventy-five Thousand Dollars ($75,000.00) in compensatory damages, and One Hundred Seventy-five Thousand Dollars ($175,000.00) in punitive damages. (See Appendix, Ex. E.)

In January, 1984, the defendants-petitioners then filed a Notice of Appeal to the Supreme Court of Ohio. That action was assigned Ohio Supreme Court Case No. 84-264. In April, 1984, the Ohio Supreme Court denied petitioners' Motion in Support of Jurisdiction (See Appendix, Ex. C). In May, 1984, the Ohio Supreme Court denied petitioners' Motion for Rehearing (See Appendix, Ex. B), and on or about July 17, 1984, the appellants-petitioners caused to be docketed with this Court their Petition for Writ of Certiorari; said action was assigned Case No. 84-103. On or about October 1, 1984, this Court denied petitioners' writ. In addition to the procedural posture set forth above, several Motions were filed with the Eighth Appellate District Court of Appeals of Ohio, in January, 1984. In its Opinion and Judgment Entry of March 6, 1984 (See Appendix, Ex. D), said Court of Appeals denied appellants' Motion to Certify, denied appellants' Motion for Consideration EN BANC, denied appellee's Motion to tax costs and CLARIFIED the decision and opinion announced December 8, 1983. Whereby, appellants then filed a Notice of Appeal from the March 6, 1984 decision and Brief in Support of Jurisdiction with the Supreme Court of Ohio, Ohio Supreme Court Case No. 84-711. The Supreme Court of Ohio denied petitioners' Motion to Certify in Case No. 84-711 (See Appendix, Ex. A).

On December 7, 1984, petitioners filed their Petition for Writ of Certiorari and commenced the foregoing action. This Brief is in response to said petition.

STATEMENT OF FACTS

On February 3, 1978, Alma Richardson was admitted to Abbey Nursing Home. She was admitted to

Abbey Nursing Home directly from University Hospital of Cleveland, where she had been hospitalized. She was transported from University Hospital to Abbey Nursing Home by an ambulance and was carried into Abbey on a stretcher. At the time Alma Richardson was admitted to Abbey Nursing Home, she was sixty-four (64) years old and very obese, weighing well over two hundred (200) pounds. Not only was Alma Richardson suffering from hypertension, but more importantly, she was suffering from the residuals of prior brain surgery and prior strokes which left her paralyzed and completely helpless. Further, she had been diagnosed as having organic heart disease which required regular medication. The results of the strokes and prior brain surgery were that Alma Richardson was a double incontinent and suffered from left hemiplegia or total paralysis of the left side of her body. Evidence at trial, including the admissions by Max Strauss, the owner/operator of Abbey and the original admission records of Abbey indicated that Abbey Nursing Home was aware of these conditions and diagnosed Alma Richardson as needing total care and being completely unable to feed or care for herself. Finally, despite these numerous and severe health problems, the evidence at trial, including the admissions of Max Strauss and the admissions records of Abbey Nursing Home, indicated that Alma Richardson's skin was in very good condition with no broken areas or irritations.[1]

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[1] Said facts are stated in the July 9, 1981 decision rendered by the Eighth District Court of Appeals; See Appendix, Ex. I. *See also* Exhibit 52, Chart of Alma Richardson while at Abbey Nursing Home, especially admission records and exam.

During the stay of Alma Richardson in Abbey Nursing Home, it was extremely over-crowded with patients; there was constant noise, crying and screaming of patients needing aid; there was a lack of professional staff, especially nurses; there was inadequate supervision of the staff on duty, some of whom engaged in sexual acts when they were supposed to be on duty caring for patients; and, the entire nursing home was kept in an unclean and unsanitary condition with the constant stench of urine and feces throughout the home.[2] Abbey Nursing Home formulated no coordinated patient-care plan for Alma Richardson; it paid insufficient attention to her dietary needs; and it formulated no physical therapy service plan for Alma Richardson.[3] The evidence at trial showed that Alma Richardson, who was totally incapable of defending herself in any way, was verbally and physically abused by members of the staff of Abbey Nursing Home and physically and sexually abused by both male and female patients (sodomy and lesbianism). Moreover, she was not fed properly, nor was she kept clean, given regular baths, regular medication or moved regularly.[4]

On June 19, 1978, Alma Richardson was withdrawn from Abbey Nursing Home by her daughter and granddaughter. She was transported to University Hospital in an ambulance. The Emergency room records of University Hospital and the testimony of Dr.

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[2] *See,* Transcript, direct testimony of Sr. Catherine Cassidy, pp. 1329 to 1332, 1339, 1388 and 1389 and Appendix, Ex. I.

[3] *See,* Exhibit 52, *Ibid.* and Appendix, Ex. I.

[4] *See,* Exhibit 52, *Ibid.* and transcript, direct testimony of Verneda Bentley, pp. 1115 to 1119 and Appendix, Ex. I.

Donald Bruce Goodfellow, the treating physician in the emergency room indicated that Alma Richardson was treated for one inch by three inch (1″ x 3″) abrasions on her left posterior thigh, which were approximately four (4) days to one (1) week old. The physician ordered an X-ray to determine if her left shoulder was fractured or broken. Although Alma Richardson's left shoulder was neither broken nor fractured, there was a very large black and blue bruised area on her left biceps (ecchymoma), her shoulder motion was very limited, and she was suffering from soft tissue trauma in this area. Further, she was suffering from a *severe rash* under her left breast.[5]

The testimony of Verneda Bentley indicated that at the time Alma Richardson was taken to the emergency room, her back and buttocks were also bruised, and there were open cuts on her back. Also, Alma Richardson's face was swollen and puffed as if she had been beaten.[6] These injuries led to investigation by the University Hospital Social Worker, Walter Drummond, since they could not possibly have been self-inflicted by a paralyzed Alma Richardson. Because of the unusual and suspect injuries, Dr. Goodfellow filled out and signed a complaint form which was forwarded to the Cuyahoga County Welfare Dpartment.[7] In ad-

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[5] *See*, Exhibit 32, University Hospital Emergency Room Report and Appendix, Ex. M.

[6] *See*, Transcript, direct testimony of Verneda Bentley, pp. 1131 to 1134, 1148 and Exhibits 18, 19, 20, 21 and 22 and Appendix, Ex. M.

[7] *See*, Transcript, direct testimony of Walter Drummond at pp. 654 and 662 and Appendix, Ex. M.

dition to the aforementioned injuries, Alma Richardson had a severe rash and open flesh area in the vicinity of her vagina as well as other lacerations, bruises and sores in other parts of her body. She was so filthy, she had to be washed by her granddaughter before the doctor could examine her.

ARGUMENT IN OPPOSITION TO CERTIORARI

1. It Is *Not* A Violation Of Article VI, Cl. 2, The "Supremacy Clause" Of The United States Constitution, When The Ohio Department Of Welfare And/Or The Cuyahoga County Welfare Departments Are Not Joined As A Party In A Civil Action And The Facts Indicate That There Was No Right To Subrogation.

Petitioners argument and alleged violation of the Supremacy Clause is totally without merit. The alleged right of subrogation referred to by petitioners does not apply in this action because *respondent did not seek to recover any money paid to Abbey Nursing Home by either the Ohio or Cuyahoga County Welfare Departments.* Section 5101.58, Ohio Revised Code, reads in pertinent part:

> No settlement, compromise, judgment or award or any recovery in any action or claim by a recipient *where the departments have a right of subrogation* shall be made final without first giving the appropriate departments notice and a reasonable opportunity to perfect their rights of subrogation (emphasis added).

Based upon the controlling Ohio law, and upon review of the uncontroverted facts in the case at bar, the Court of Appeals, for the Eighth Appellate District (Cuyahoga County, Ohio) held, at page 11, ". . .

[a]ny expenses or damages claimed in this suit were only those suffered directly by plaintiff. As a result, the Ohio Department of Welfare has no right to subrogation."[8] Thus, petitioners' argument hereunder is without merit.

2. Petitioners Are *Not* Entitled To Certiorari Because There Is Absolutely No Proof Of Any Alleged Violation Of The Due Process And/Or Equal Protection Clauses Of The Fourteenth Amendment To The United States Constitution.

Once again, *petitioners* erroneously argue that they have been denied due process and equal protection under the laws. The Supreme Court of Ohio found absolutely *NO* such violation and the Ohio Court of Appeals found *NO* violation.[9] Respondent respectfully urges this Court to also find there were no violations; petitioners have received full, fair and complete equal protection and due process under the laws of our land.

Petitioners' opportunities to make a record of the trial court proceedings were often and many. Petitioners' opportunities to make proffers for the record were *unlimited* by the trial court. As a matter of judicial economy and within the discretion of the lower court, the lower court had some conversations with both counsel "off-the-record."

Respondent submits that if the substance of "off-the-record" conversation and/or proceedings were of such importance, then defense counsel should have pursued other available options in order to present such matters to the Court of Appeals for review. App.

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[8] *See* Appendix, Exhibit E.

[9] *See* Appendix, Exhibits A, D and E.

R. 9(C), Ohio Rules of Appellate Procedure, permits an appellant (i.e., petitioner) to submit a narrative transcript of the proceedings when a *verbatim* transcript is unavailable. App. R. 9(D) authorizes parties to submit an agreed statement of the case in lieu of the record. App. R. 9(E) states:

> * * * If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted.

See also, Knapp v. *Edwards Laboratories,* 61 Ohio St.2d 197 (1980).

The trial court *correctly* followed the controlling case law and did *not* require respondent to present expert testimony. The trial court and Eighth District Court of Appeals correctly followed the holdings in *Estate of Alma Richardson* v. *Abbey Nursing Home, Inc.* (decided July 9, 1981), *supra,*[10] and *Jones* v. *Hawkes Hospital of Mt. Carmel,* 175 Ohio St. 503 (1964).

In the foregoing action, respondent sought recovery for the negligence of a nursing home in allowing (and failing to prevent) a partially paralyzed and incontinent woman from: suffering bruises, diaper rash, sitting in her own stools and smelling so foul from neglect so as to offend anyone who came in contact with her,

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[10] *See* Appendix, Exhibit O.

including the emergency room physician at University Hospital on June 19, 1978.

The Court of Appeals correctly held that these are matters of common knowledge. The Court held, at page 4:[11]

> *The evidence in this case was of gross, deplorable conditions, total lack of supervision and both abuse and neglect of plaintiff. Expert testimony is not required where the matter is one of common knowledge . . . This assignment of error lacks merit.*

Petitioners incorrectly argue that they were excluded from offering testimony to establish that Abbey Nursing Home employee, Evelyn Brooks, enjoyed a good reputation for "peace and good order." Evid. R. 404, Ohio Rules of Evidence, excludes evidence of a person's character in civil cases for the purpose of proving that he acted in conformity with that character on a particular occasion unless the evidence concerns the character trait of truthfulness admitted on the issue of credibility. There are exceptions to this general rule; however, *respondent never offered testimony that Evelyn Brooks had a bad reputation for the character trait of "peace and good order."* Respondent's testimony was limited to accounts where Evelyn Brooks' actions at the nursing home were witnessed and related to the jury. The issue in the instant case concerned the *custodial care and treatment of Alma Richardson while a patient at Abbey Nursing Home.*

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[11] *See* Appendix, Exhibit E. This issue is discussed in greater detail at subsection 3 herein.

With respect to liability, the only issue presented to the jury for its determination was simple negligence.[12] Therefore, the issue raised by petitioners regarding this issue is wholly without merit.

The charge to the jury on the issue of punitive damages was just and proper. A review of the evidence presented at trial shows:

> On February 3, 1978, Alma Richardson was admitted to Abbey. *She was partially paralyzed from several strokes, could not feed herself and was incontinent.*
>
> On June 19, 1978, she was taken by ambulance to University Hospital. *The family was asked to wash her before the doctor would examine her.* Dr. Goodfellow observed a large bruise on her left arm, abrasions on her thigh, and a diaper-like rash under her breasts. Bruises were also observed on her buttocks.
>
> *Conditions at Abbey were deplorable. Bed linens were dirty,* patients were tied to chairs with bed sheets, patients were *sitting in their waste.* The utensils were dirty. *Cockroaches* were prevalent, *rats* were in the building, and flies were in the food.
>
> *As to Alma Richardson, she was seen sitting in her own stool, had the dirt, bruises and diaper rash previously discussed.* Also, two patients, a male and a female, attempted to sexually abuse her. There was evidence she had been struck. On one occasion, she fell from a potty chair and suffered bruises and lacerations.[13]

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[12] *See* Appendix, Exhibit I, Tr. p. 2138.

[13] *See* Appendix, Exhibit E.

Ohio case law consistently indicates that when the facts show that a defendant has acted in a *callous and cavalier manner,* it is a question of fact for the jury to determine if such acts were willful and wanton and sufficient to award plaintiff punitive damages. Furthermore, Ohio courts have held that malice ". . . may be inferred from conduct and surrounding circumstances." *Columbus Finance Co.* v. *Howard,* 42 Ohio St.2d 178, 327 N.E.2d 654, 658 (1975); citing *Davis* v. *Tunnison,* 168 Ohio St.471, 155 N.E.2d 904 (1959); *Gearhart* v. *Angeloff,* 17 Ohio App.2d 143 (1969).

Taking into consideration the conduct and circumstances at Abbey Nursing Home while Alma Richardson was under their care, the Eighth Circuit Court of Appeals held, at page 20:

> Abbey's actions were intentional and deliberate from the point that they were unable to deal with or solve the multitude of problems with which they were confronted. However, they continued to accept incontinent, bedridden, helpless patients well knowing they could not provide a decent quality of care.
>
> It can only be considered the utmost of greed that a provider would accept patients knowing they did not have proper facilities and could not give them care. *Abbey's conduct was outrageous* (emphasis added).

Furthermore, at page 23, it was held:

> Punitive damages may be awarded where the evidence demonstrates "wanton, willful, and gross acts" which support the conclusion of reckless indifference on the part of Abbey.

> *The record supports the above as well as outrageous conduct and insult*[14] (emphasis added).

Therefore, proving that the jury was correctly charged on the issue of punitive damages; and, that petitioners were *NOT* deprived of *any* due process or equal protection of the laws.

3. Petitioners Are *Not* Entitled To Certiorari Because There Is Absolutely *No* Proof Of Any Alleged Violation Of Petitioners' Liberty Interest.

In addition to those arguments and law previously discussed herein regarding the issue of expert testimony, respondent further states that the law in Ohio is clear that expert testimony is *not required* where the subject matter of inquiry is within the common knowledge of the jury. The issue of whether expert testimony is needed to establish the standards in the nursing home industry or nursing profession was addressed by the Court of Appeals in the first appeal of this action.[15] That Court held, *inter alia,* that expert opinion testimony was *not* necessary in the instant case. The Court stated as follows:

> Even if experts had testified to the usual and customary care given by a nursing home, "it is entirely possible . . . that what is usual and customary [in the nursing home industry] may itself be negligence." *Stogsdill* v. *Manor Convalescent Home* (1976), 35 Ill. App. 3d 634, 662, 343 N.E.2d 589, 610.
>
> The logic in support of a "reasonable care" standard is persuasive for a service facility which

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[14] *See* Appendix, Exhibit E.

[15] *See* Appendix, Exhibit O.

> is essentially custodial. *Decedent's medical care while at the defendant institution is not a major issue in this case. Her care, as a human being needing protection, is.* (Opinion at 11.)

The testimony at the trial court level in no way evidenced any fact or circumstance which challenged the competency of the nurses in their professional capacity at Abbey Nursing Home. Hence, the appellate court determined the appropriate standard to be that of "reasonable care" where the facts presented no allegation or challenge to the professional competence of the nurses at Abbey.

Consequently, this determination of reasonable care negated the necessity of expert testimony as an aid to the jury in their determination of whether defendants were *negligent in the custodial care and protection afforded decedent.* In fact, it would have been an usurpation of the jury's function to admit such testimony. In *Bahamas Agr. Industries, Ltd.* v. *Riley Stoker Corp.*, 526 F.2d 1174 (1975), the Court adhered to the rule in Ohio that expert testimony is not a prerequisite in every case to determine a standard of care.

> The Supreme Court of Ohio has declared that there is no general rule or policy in Ohio which requires expert testimony as to the standard of care in a particular case. *Bahamas* at 1178, citing *Thompson* v. *Ohio Fuel Gas Co.*, 9 Ohio St.2d 116, 224 N.E.2d 131 (1967).

Further, in *Jones* v. *Hawkes Hospital of Mt. Carmel,* 175 Ohio St.503 (1964), the Court limited the competence of expert opinion evidence:

> Broadly speaking, expert opinion evidence is admissible only where the inquiry involves a question of science or art, or of a professional or mechanical skill, and is incompetent where the matter of inquiry is within the common knowledge of average general information . . . The jury, unaided by the opinion of experts, was sufficiently equipped with knowledge gained from everyday life to consider the facts and to return a verdict supported by competent evidence of proof of negligence proximately causing appellant's injuries. *Jones* at 506, 507.

Expert opinion evidence was neither necessary nor competent as an aid in the jury's determination in the instant case. As stated by the appellate court, the decedent's *"care, as a human being needing protection,"* was the negligence issue before the jury.

The standard of care for nursing homes in Ohio has not been established by the legislature nor by judicial precedent. Nevertheless, it is clear in Ohio that "reasonable care" is the proper standard when such voids exist. The duty of petitioners alleged to have been breached was that of reasonable care in the *custodial care and protection* of decedent. Consequently, the negligence complained of was well within the ambit of ordinary, simple negligence. Wherefore, the petitioners' arguments regarding this issue are not well taken.

CONCLUSION

Wherefore, based upon the law and arguments set forth herein, respondent respectfully requests this Court to find petitioners' arguments are not well taken; and, therefore, certiorari must be denied.

Respectfully submitted,

NICHOLAS M. DEVITO, ESQUIRE
Estate of Alma Richardson,
Verneda Bentley, Administratrix

NICHOLAS M. DEVITO & ASSOCIATES
Suite 1000 Terminal Tower
Cleveland, Ohio 44113
(216) 687-1212

Counsel of Record for Respondent

CERTIFICATE OF SERVICE

I, Nicholas M. DeVito, Counsel for Respondent, Estate of Alma Richardson, Verneda Bentley, Administratrix, and a member of the Bar of the Supreme Court of the United States, certify that on January 4, 1985, I served three (3) copies of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari on Aubrey B. Willacy, Esquire, Attorney for Petitioners, by regular U.S. Mail, First Class, addressed to: Aubrey B. Willacy, Esquire, 700 Western Reserve Building, 1468 West Ninth Street, Cleveland, Ohio 44113.

/s/ N. M. DeVito
Nicholas M. DeVito, Esq.
Attorney for Respondent